

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

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SHIMIKA GOUDEAU,  
*Plaintiff,*

v.

OKMULGEE COUNTY CRIMINAL  
JUSTICE AUTHORITY; and OKMULGEE  
COUNTY BOARD OF COMMISSIONERS,

*Defendants.*

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Case No. CIV-23-64-RAW-JAR

**ORDER**

Before the court is the Defendants' Amended Motion to Dismiss Plaintiff's Amended Complaint [Docket No. 15] and the United States Magistrate Judge Robertson's Findings and Recommendation ("F&R") [Docket No. 33]. This case was referred to Magistrate Judge Robertson for all pretrial and discovery matters, including dispositive motions, pursuant to 28 U.S.C. § 636 and Fed. R. Civ. P. 72 and 73.

Defendants' filed their Amended Motion to Dismiss Plaintiff's Amended Complaint [Docket No. 15] claiming that service of process was insufficient under Fed. R. Civ. P. 12(b)(5) as the requirements of Rule 4(m) for timely service were not met. The magistrate judge's analysis took into account the removal of the action to this court from the Oklahoma state court in arriving at the conclusion that Plaintiff failed to timely serve the defendants. Further, the magistrate judge considered the factors weighing on the issue of a possible permissive extension for service and found that those favor the defendants. *See Shepard v. United States Dep't of Veterans Affs.*, 819 F. Appx. 622, 624 (10<sup>th</sup> Cir. 2020). Magistrate Robertson found that without proper service, the court is deprived of the appropriate personal jurisdiction over Defendants to proceed with the case. *Okla. Radio Assocs. v. F.D.I.C.*, 969 F.2d 940, 943 (10<sup>th</sup> Cir. 1992)

(“service of process [under Fed. R. Civ. P. 4] provides the mechanism by which a court having venue and jurisdiction over the subject matter of an action asserts jurisdiction over the person of the party served.” *Citing Hukill v. Oklahoma Native Am. Domestic Violence Coal.*, 542 F.3d 794, 797 (10<sup>th</sup> Cir. 2008)).

Upon consideration of the motion, the briefing, and the record, the Magistrate Judge issued the F&R on October 17, 2023, recommending that Defendants’ Amended Motion to Dismiss Amended Complaint be GRANTED and that the case be dismissed without prejudice\*. Any objections to the F&R were to be filed within fourteen days. No objections have been filed.

The court finds that the F&R is well-supported by the evidence and the prevailing legal authority. Accordingly, the F&R [Docket No. 33] is hereby AFFIRMED and ADOPTED as this court’s Findings and Order. Defendants’ Amended Motion to Dismiss Amended Complaint [Docket No. 15] is hereby GRANTED and the case is dismissed without prejudice.

**IT IS SO ORDERED** this 7<sup>th</sup> day of November, 2023.



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**THE HONORABLE RONALD A. WHITE  
UNITED STATES DISTRICT JUDGE  
EASTERN DISTRICT OF OKLAHOMA**

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\* The court notes that the magistrate judge’s recommendation stating that “Defendants’ Amended Motion to Dismiss Plaintiff’s Amended Complaint [15] be dismissed without prejudice” contains a typographical error --a missing phrase--and based upon the analysis by the magistrate the conclusion should have stated the recommendation as “Defendants’ Amended Motion to Dismiss Plaintiff’s Amended Complaint [15] be granted and the case dismissed without prejudice.